



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

August 23, 1989
AO-89-18

Peter F. O'Connell
1620 Hancock Street
Quincy, Massachusetts 02169

Dear Mr. O'Connell:

This letter is in response to your request for an advisory opinion.

You have stated that you are a candidate for Mayor in the City of Quincy. You are also involved in a number of Quincy-based business ventures. Your brother, William O'Connell, and you established a general partnership (the "Partnership") more than twenty years ago, which is engaged in the construction and general contracting business, primarily constructing residential and office buildings on property owned by both of you in the City of Quincy. Since establishing the Partnership, your business has grown to include real estate development and property management interests. The Partnership still exists, together with a number of affiliated corporations (the "Corporations") and joint ventures.

Upon announcing your candidacy, you resigned as an officer and no longer participate in the decision-making process in the Corporations. You have not transferred any financial interest in the Corporations.

You have posed a number of questions concerning these entities and their relationship to your campaign for Mayor. Central to these questions is the use of property such as two-way radios and cars owned or leased by the Partnership and/or the Corporations by your political committee. You have estimated that the value of any payments made by your committee for the use of such property would constitute less than 1% of the gross revenues of the entity which owns or leases such property. The specific questions, and our responses to them are set forth below.

1. May the Partnership, of which you and your brother are partners, donate equipment and/or services to your political committee?

Section 7 of M.G.L. c.55 states, in pertinent part, "Any

individual may make campaign contributions to candidates or non-elected political committees organized on behalf of candidates; provided that the aggregate of all such contributions for the behalf of any one candidate and the non-elected political committee organized on such candidate's behalf shall not exceed in any one calendar year the sum of one thousand dollars."

This office has permitted individuals who are partners in a general partnership to contribute up to \$1,000 per individual in a calendar year by means of a check or checks drawn on the partnership's account and clearly identified as being given by such individual partner, provided such account is not an overhead or similar account but one which contains only profit or income distributable to the partners. It is the opinion of this office that any checks drawn on such a partnership's overhead account could not be allocated to a portion of the overhead attributable to a specific partner and therefore would not be considered a contribution by an individual.

It is our understanding that any equipment or services donated by the Partnership to your political committee would of necessity be paid through the overhead account. Therefore it is the opinion of this office that such equipment or services may not be donated to your committee by the Partnership. If this understanding is incorrect we would be happy to reconsider this portion of the opinion.

2. May the Partnership lease or sell equipment and/or services to your committee?

Section 6 of M.G.L. c.55 and the regulations promulgated thereunder permit candidates and political committees to make political expenditures so long as such expenditures are not "primarily for the candidate's or any other person's personal use."

Any purchase or lease of equipment or purchase of services by your committee from the Partnership could be considered the personal use of campaign funds because of the interest you hold in the Partnership. It is the opinion of this office, however, that such purchase or lease by your committee would not be a personal use of campaign funds if (1) the revenue enjoyed by the Partnership from such purchase or lease was incidental to the business of the Partnership and (2) the equipment and/or services so provided were procured for use in the business of the Partnership and not for use by your committee. We further believe that the estimate of less than 1% of the annual gross revenues of the Partnership as the value of the payments to be received from your committee for such equipment and services would be considered incidental.

3. Must the sale or lease of equipment and/or services by the Partnership to your committee be at market rates and prices?

The value of such equipment or services should be determined based on the actual cost of the equipment or service. If the actual cost cannot be determined (for example, the use of office resources such as computers and copiers) the fair market value of the equipment or service may be used.

4. If the Partnership provides any equipment or services to your committee for which the committee pays fair market value, would the provision of such equipment or services be considered a contribution subject to rules of allocation and the \$1,000 contribution limitation?

Section 1 of M.G.L. c.55 defines "contribution" as "a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election or said individual or candidate . . . and shall include any . . . gift, subscription, loan, advance, deposit or money, or thing of value . . . payment, by any person other than a candidate or political committee, or compensation for the personal services of another which are rendered to such candidate or committee . . . discount or rebate not available to other candidates for the same office and to the general public . . . forgiveness of indebtedness or payment of indebtedness by another person . . ."

It is the opinion of this office that if your political committee were to pay the actual cost, or if such cost could not be determined, the fair market value, of any equipment or services provided by the Partnership, the provision of such equipment or services would not be considered a contribution subject to rules of allocation and the \$1,000 contribution limitation.

5. Does any provision of M.G.L. c.55 preclude you from taking items from the Partnership and listing the receipt of such items as personal income, and subsequently making those items available to your committee and reporting them as your personal contribution? Would such personal contributions from you be subject to any ceiling or cap?

Provided any items you wished to donate to your committee were distributed and accounted for as distributions to you from the Partnership's income or profit account rather than an overhead account as described in the answer to Question 1 above, it is the opinion of this office that you could in turn contribute such items to your committee as "in-kind" contributions. Section 7 of M.G.L. c.55 states that "any

candidate may . . . make expenditures without limitation for the purposes of his own campaign." There is no limitation, therefore, on the amount of such in-kind contributions which could be made by you.

This office cannot advise you on the question posed above with respect to any state law other than the application of M.G.L. c.55.

6. May the Corporations lease or sell, at market rates, equipment and/or services to your committee?

The answers given above to Questions 2 and 3 are equally applicable to this question.

7. May independent corporations, with which any of the Corporations or the Partnership has a contractual relationship, such as a profit-sharing arrangement or a landlord-tenant relationship, lease or sell equipment and/or services to your committee in accordance with 1980 Opinion of the Attorney General?

Section 8 of M.G.L. c.55 prohibits any business corporation from giving, paying, expending or contributing, or promising to give, pay, expend or contribute any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of person to public office.

In a November 6, 1980 Opinion, the Attorney General noted:

The Massachusetts statutory scheme does not prohibit corporations from selling or renting their facilities, goods and services to candidates for political office or political committees organized on their behalf. Questions arise, however, as to the remuneration that the corporations must receive in return for the goods or services provided. It is my opinion that corporations may not offer those goods or services without charge and must charge a rate such that no discount or rebate is offered to any candidate or committee which is not available to other candidates for the same office and to the general public.

It is the opinion of this office, therefore, that any corporation which is independent of you, and of any officer of your committee (i.e. neither you nor any officer has an interest in the corporation), may provide equipment or services to your committee provided such corporation receives remuneration therefor from the committee.

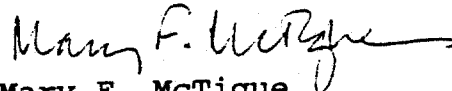
This opinion is based solely on the representations made in your letter and in your meeting on August 2, 1989 with

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us. In addition, this opinion is issued solely in the
context of M.G.L. c.55.

If you have additional questions please do not hesitate
to contact this office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mary F. McTigue".

Mary F. McTigue
Director

MFM/wp